

ATTACHMENT C

PROPERTY MANAGEMENT AGREEMENT

Amended August 28<sup>th</sup>, 2008

This amendment to the Property Management Agreement is a modification to Article 11, 3.1 (C) as indicated by strikeout.

## TABLE OF CONTENTS

Article	Page
ARTICLE I .DEFINITIONS.....	1
ARTICLE II .EMPLOYMENT OF MANAGER; TERM.....	3
2.1 Employment.....	3
2.2 Term.....	3
ARTICLE III .DUTIES OF PARTIES.....	4
3.1 Duties.....	4
3.2 Findings Confidential.....	9
3.3 Authority Withheld.....	10
3.4 No Other Duties.....	10
3.5 Exclusion.....	10
ARTICLE IV .COMPENSATION OF MANAGER .....	10
4.1 Management Fee .....	10
4.2 No Other Fees or Compensation.....	11
ARTICLE V .TERMINATION.....	11
5.1 Automatic Termination.....	11
5.2 Termination by the JPA for Default .....	11
5.3 Termination by the JPA Without Default .....	11
5.4 Termination by Property Manager for Default.....	12
5.5 Termination Upon Destruction or Condemnation.....	12
5.6 Property Manager's Duties Upon Termination.....	12
5.7 The JPA's Duties Upon Termination.....	12
ARTICLE VI .ASSIGNMENT.....	13
6.1 Assignment by Property Manager.....	13
6.2 Assignment by the JPA.....	13
ARTICLE VII .NO INTEREST IN REAL PROPERTY; NO PARTNERSHIP PROPERTY OF OWNER .....	13
7.1 Not Real Property .....	13
7.2 No Partnership.....	13
ARTICLE VIII .MISCELLANEOUS.....	14
8.1 Notices.....	14
8.2 No Waiver.....	14
8.3 Partial Invalidity.....	14
8.4 Estoppel Certificates.....	15
8.5 Entire Agreement .....	15

8.6 References in this Agreement .....	15
8.7 Counterparts.....	15
8.8 Amendments.....	15
8.9 Applicable Law.....	15
8.10 Successors and Assigns.....	15
8.11 Time of the Essence .....	15
8.12 Attorneys Fees .....	15

## PROPERTY MANAGEMENT AGREEMENT

### MTS TOWER

THIS PROPERTY MANAGEMENT AGREEMENT, is made and entered into as of the \_\_\_\_ day of November, 2008 by and between San Diego Regional Building Authority, a joint exercise of powers agency having an address of 1255 Imperial Avenue, Suite 1000, San Diego, California 92101 (the "JPA") and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Property Manager").

### RECITALS

- A. The JPA is the owner and ground lessee of certain real property improvements located in the City of San Diego, California, located at 1255 Imperial Avenue. The underlying real property is owned by the Metropolitan Transit System (the "Property").
- B. The improvements consist of a ten story office building, a parking structure and a clock tower (the "Improvements"). The County of San Diego leases floors two through 8, and subleases floors 9 and 10 to MTS. MTS leases the first floor to private retail tenants.
- C. The JPA desires to engage the services of an independent management company to manage, operate, maintain, repair and lease the Property and the Improvements for and on behalf of the JPA, all in accordance with the terms and provisions hereof.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the JPA and Property Manager agree as follows:

### ARTICLE I

#### DEFINITIONS

All terms used in this Agreement which are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement. As used in this Agreement, the following terms shall have the following meanings (such meanings to be applicable to both the singular and plural form of the terms defined):

- 1.1 "Applicable Law" shall mean all building codes, zoning ordinances, laws, orders, writs, ordinances, rules and regulations of any federal, state, county or city, or of any division, agency, bureau, court, commission or department thereof, or of any public officer or official, having jurisdiction over or with respect to the Property and the Improvements.
- 1.2 "Budget" shall mean a statement setting forth the estimated receipts and expenditures (capital, operating and other) for the Property and the Improvements for the period covered by such statement.
- 1.3 "Emergency" shall mean an event requiring action to be taken prior to the time that approval could reasonably be obtained from the JPA (a) in order to comply with Applicable Law, any Insurance Requirement or this Agreement, or to preserve the Property and the Improvements (or any part thereof), or (b) for the safety of any tenants, occupants, customers or invitees thereof, or (c) to avoid the suspension of any services necessary to the tenants, occupants, licensees or invitees thereof.
- 1.4 "Fiscal Year" shall be from July 1 through June 30.

- 1.5 "Insurance Requirements" shall mean the requirements of any insurance policies from time to time in effect in respect of the Property and the Improvements, or of any insurance carriers or boards of fire underwriters or similar insurance rating organizations having jurisdiction in respect of the Property and the Improvements.
- 1.6 "Person" shall mean any corporation, partnership, joint venture, individual, business trust, real estate investment trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.
- 1.7 "Reimbursable Expenses" shall mean the sum of (a) any expenses which the JPA is expressly obligated to reimburse to Property Manager under this Agreement (b) any expenses which Property Manager incurs at the express direction of the JPA and (c) all expenses incurred by Property Manager in the performance of its duties under this Agreement and authorized by any Budget, including, without limitation, office rent, utility expenses, supplies, materials, legal fees and disbursements, salaries and benefits payable to employees of Property Manager (such as the building engineer, security and maintenance personnel), and the cost of contract services and independent contractors, but excluding (i) all office, accounting, management and administrative expenses applicable to Property Manager's home office overhead and its normal operating expenses, (ii) expenses incurred by Property Manager and attributable to the default of Property Manager hereunder.
- 1.8 "Rents" shall mean all gross rents, utility payments, tax payments, insurance payments, maintenance charges and other payments payable under Space Leases, and any other income of the Property and Improvements, excluding security deposits.
- 1.9 "Service Contracts" shall mean all service, maintenance and other contracts respecting maintenance or operation of the Property and Improvements.
- 1.10 "Space Leases" shall mean all leases, subleases, tenancies, and other occupancy agreements between the JPA and another party, whether or not of record, for the use, enjoyment or occupancy of any portion of the Property and Improvements by tenants.
- 1.11 "Space Lessees" shall mean all tenants, lessees, and other occupants of portions of the Property and Improvements under Space Leases.
- 1.12 "Term" shall mean the duration of this Agreement as set forth in Section 2.2 hereof.
- 1.13 "Underlying Documents" shall mean all ground leases, mortgages, deeds to secure debt, assignments of leases and rents, easements and construction and/or operating agreements affecting the Property and Improvements or any portion thereof, and any amendments, modifications, or renewals of any of the foregoing.

## ARTICLE II

### EMPLOYMENT OF MANAGER; TERM

- 2.1 Employment. The JPA hereby appoints Property Manager as an independent contractor, and Property Manager hereby accepts such appointment as an independent contractor, with exclusive responsibility to operate, maintain, manage, and repair the Property and Improvements, and Property Manager agrees, in consideration of the compensation specified in Article IV, to perform his or her obligations hereunder with due diligence, in an efficient and proper manner and in accordance with the terms and conditions herein set forth. Property Manager shall be an independent contractor, and this Agreement shall not create any

employment relationship, either express or implied between Property Manager (or any Person employed by Property Manager) and the JPA.

- 2.2 Term. The services of Property Manager hereunder shall commence January 1, 2009. Unless sooner terminated pursuant to Article V hereof, this Agreement shall continue in full force and effect for a period of five (5) years thereafter. The JPA shall determine at least one hundred eighty (180) days in advance of the termination date whether it intends to extend management services under the Agreement.

## ARTICLE 11

### DUTIES OF PARTIES

- 3.1 Duties. During the Term, Property Manager shall operate, maintain, manage, and repair the Property and Improvements in a first class, high quality manner in keeping with the standards maintained by other first class, high quality properties of similar kind and location, all of which shall be done with due diligence and in good faith. Without limiting the generality of the foregoing, and subject to all of the other terms and provisions of this Agreement, Property Manager as an independent contractor from JPA, shall perform the following functions during the Term:
- a. Prepare the Budget. On or before April 1 of each year of this Agreement, prepare an annual budget for the Property and the Improvements on behalf of the JPA. All aspects of the anticipated expenses to be incurred in the operation, ownership and management of the Property and Improvements, including capital expenditures and heavy maintenance deemed necessary by Property Manager, shall be set forth in the Budget. Except as otherwise provided in this Agreement, Property Manager shall incur no expenses in connection with the Property and Improvements that are not provided for in the Budget, unless such expenditures are approved by the JPA in writing. In the event the JPA fails to approve a submitted Budget prior to the beginning of the next Fiscal Year, Property Manager shall operate the Property and Improvements under the last Budget on an item-by-item basis until such Budget is approved by the JPA. The JPA may revise the budget at anytime. Property Manager shall implement the Budget. The expenses which Property Manager is authorized to incur and pay on behalf of the JPA hereunder (hereinafter called the "Property Expenses") shall in all respects be limited to those expenses set forth in the Budget for the Fiscal Year during which such expenses are paid; provided, however, that the Property Manager shall be authorized to incur and pay for all expenses specifically approved by the JPA, regardless of whether or not such expenses are within the limitations set by the Budget. If an Emergency occurs necessitating repairs, the cost of which would have the effect of exceeding the Budget, and Property Manager is unable to communicate promptly with the JPA, then Property Manager may order and contract for such Emergency repairs, with the cost thereof being included as a Reimbursable Expense for the purpose of this Agreement, and Property Manager shall promptly thereafter notify the JPA of any such expenses and the nature of the Emergency. The JPA shall thereafter notify the Property Manager in writing whether it agrees or disagrees that such expenses were incurred in response to an Emergency. Any dispute concerning whether expenses were incurred in response to an Emergency shall be resolved pursuant to the disputes provision set forth below.
  - b. Inquiries and Complaints. Property Manager shall receive, consider and handle complaints related to the operation and repair of the Property and Improvements.
  - c. ~~Insurance. Before commencement of work under this Agreement, Property Manager shall submit insurance policies or certificates of insurance evidencing that Property~~

Manager has obtained from generally recognized insurers, insurance in the following forms of coverage and minimum amounts specified:

- i) ~~Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Property Manager waives any rights of subrogation against JPA, the County, and MTS, and the policy form must permit and accept such waiver.~~
- ii) ~~Commercial General Liability insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to JPA in an amount not less than \$2,000,000. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.~~
- iii) ~~Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles in an amount no less than \$1,000,000.~~
- iv) ~~A comprehensive Dishonesty, Destruction and Disappearance (3-D) Policy of: 1) \$40,000 Fidelity (Commercial Blanket) 2) \$20,000 Money and Securities on Premises 3) \$20,000 Money and Securities off Premises~~

~~All policies required shall be issued by companies who hold a current policyholder's alphabetic and financial size category rating of not less than AV, in accordance with Best's Insurance Report. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial size category rating of not less than A-VI, in accordance with A.M. Best. Property Manager agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of JPA, MTS, or the County shall be excess and noncontributory (endorsement required).~~

~~The policies (except Workers' Compensation) shall name San Diego Regional Building Authority, Metropolitan Transit System and the County of San Diego as additional insured. Each policy of insurance shall contain the following clause:~~

~~"It is agreed that this policy shall not be cancelled nor the coverage reduced until thirty (30) days after the San Diego Regional Building Authority shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to the San Diego Regional Building Authority, as evidenced by properly validated return receipt." Property Manager shall maintain such insurance in effect throughout the term of this Agreement.~~

~~The foregoing requirements as to the types and limits of insurance coverage to be maintained by Property Manager, and any approval of said insurance by JPA are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Property Manager pursuant to this Agreement, including but not limited to the provisions concerning indemnification.~~

- c. Insurance requirements for Property Manager. Without limiting Property Manager's indemnification obligations to JPA, MTS and the County, Property Manager shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and

the results of the work by the Property Manager, his agents, representatives, employees or subcontractors.

#### 1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non owned, hired auto Insurance Services Office form CA0001.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Errors and Omissions Liability.
- E. Fidelity coverage providing Employee Dishonesty, Forgery or Alteration, Theft, Disappearance, Destruction, and Computer Fraud coverage covering Property Managers employees, officials and agents.

#### 2. Minimum Limits of Insurance

Property Manager shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of JPA, MTS and the County of San Diego.
- D. Professional Errors and Omissions Liability: \$1,000,000 per claim with an aggregate limit of not less than \$2,000,000. Any self-retained limit shall not be greater than \$25,000 per occurrence/event without JPA's approval. Coverage shall include contractual liability coverage. If policy contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any such aggregate limit has been paid or reserved, JPA will require additional coverage to be purchased by Property Manager to restore the required limits. This coverage shall be maintained for a minimum of two years following termination or completion of Property Manager's work pursuant to the Contract.
- E. Fidelity \$1,000,000 limit.

#### 3. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the JPA. At the option of the JPA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the JPA, MTS and the County, the members of their Boards and their officers, agents, employees and volunteers; or the Property Manager



shall provide a financial guarantee satisfactory to the JPA, MTS and the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

#### 4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement

Any general liability policy provided by Property Manager shall contain an additional insured endorsement applying coverage to the JPA, MTS and the County of San Diego, their members of their Boards and the officers, agents, employees and volunteers of the JPA, MTS and the County, individually and collectively.

B. Primary Insurance Endorsement

For any claims related to this Contract, the Property Manager's insurance coverage shall be primary insurance as respects the JPA, MTS and their members of the Boards and their officers, agents, employees and volunteers of the JPA, MTS and the County, individually and collectively. Any insurance or self-insurance maintained by the JPA, MTS and the County, its officers, officials, employees, or volunteers shall be excess of the Property Manager's insurance and shall not contribute with it.

C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the JPA.

D. Severability of Interest clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

#### General Provisions

#### 5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by JPA, MTS and the County's Risk Management Division.

#### 6. Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Property Manager shall furnish the JPA, MTS and the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Property Manager shall furnish certified copies of the actual required insurance policies within thirty days after commencement of Contract. Thereafter, copies of renewal policies, certificate and amendatory endorsements shall be furnished to JPA, MTS and the County within thirty days of the expiration of the term of any required policy. Property Manager shall permit JPA at all reasonable times to inspect any policies of insurance which Property Manager has not delivered to JPA, MTS and the County.

#### 7. Failure to Obtain or Maintain Insurance; JPA's Remedies

Property Manager's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and JPA may, at its option, terminate the Contract for any such default by Property Manager.

#### 8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Property Manager, and any approval of said insurance by the JPA, MTS and the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Property Manager pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

#### 9. Review of Coverage

JPA retains the right at any time to review the coverage, form and amount of insurance required herein and may require Property Manager to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

#### 10. Self-Insurance

Property Manager may, with the prior written consent of the JPA, fulfill some or all of the insurance requirements contained in this Contract under a plan of self insurance. Property Manager shall only be permitted to utilize such self-insurance if in the opinion of the JPA, Property Manager's (i) net worth, and (ii) reserves for payment of claims of liability against Property Manager, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Property Manager's utilization of self-insurance shall not in any way limit liabilities assumed by Property Manager under the Contract.

#### 11. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Property Manager's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Property Manager will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insureds.
- C. If insurance is terminated for any reason, Property Manager shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

#### 12. Subcontractors' Insurance

Property Manager shall require that any and all Subcontractors hired by Property Manager are insured in accordance with this Contract. If any Subcontractors coverage

does not comply with the foregoing provisions, Property Manager shall defend and indemnify the JPA, MTS and County from any damage, loss, cost or expense, including attorney fees, incurred by JPA, MTS and County as a result of Subcontractors failure to maintain required coverage.

### 13. Waiver of Subrogation

Property Manager and JPA, MTS and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Contract), but only to the extent that the proceeds received from any policy of insurance carried by JPA, MTS and County or Property Manager, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Property Manager hereunder shall be a standard waiver of rights of Subrogation against JPA, MTS and County by the insurance company issuing said policy or policies.

- d. Hold Harmless. Property Manager shall indemnify and hold the JPA harmless against any damages or liability, including reasonable attorney's fees, resulting from Property Manager's negligence or willful misconduct, or from Property Manager's failure to carry insurance as required by paragraph 3.1.d, except to the extent such damages or liabilities are actually paid by the proceeds of insurance. The provisions of this paragraph 3.1.e shall survive the expiration or earlier termination of this Agreement.
- e. Contract Services. Property Manager shall maintain contracts for electricity, gas, fuel, water and telephone, if such contracts are available, and for maintenance service, security service, rubbish hauling, exterminator, elevator and any other services and utilities as Property Manager shall deem advisable. Property Manager shall be responsible for administering all such contract services subject to the limitations set forth in this Agreement. The on-site Building Manager and Engineering staff shall be direct employees of the Property Manager. Property Manager may, at its option, cause services such as maintenance, guard service, parking management and similar services to be provided by employees of Property Manager subject to prior approval of the JPA.
- f. Food Services. Property Manager shall manage and supervise the provision of all food and beverage services including but not limited to food and beverage vending machines, throughout the Building and Improvements. Property Manager shall meet periodically with each designated tenant representative to coordinate those services.
- g. Repairs. Property Manager shall arrange for and supervise all routine repair and maintenance of the Property and Improvements. Subject to the Budget, Property Manager shall make or install or cause to be made or installed all alterations, repairs, decorations, replacements, equipment and installations necessary to maintain the Property and Improvements in a clean, safe and orderly condition or as required by the Underlying Documents, Applicable Law or Insurance Requirements, or as directed to be made or installed by the JPA; provided, however, that no such alterations, repairs, decorations, replacements, equipment or installations shall, except in the event of an Emergency, be made by Property Manager without the JPA's prior written approval, unless the amount is specifically included in the Budget. Property Manager shall also purchase all materials and supplies necessary in connection with the operation, maintenance and repair of the Property and Improvements. Property Manager shall administer all lease clauses governing alterations by tenants including review and approval of plans and obtaining "as built" drawings for the owner's files at the completion of alterations. Notwithstanding the generality of the foregoing Property Manager shall have no responsibility or authority to contract for or supervise the construction of tenant improvements or alterations made pursuant to Space Leases.

- h. Independent Contractors. On an incidental basis and as necessary to discharge its duties under this Agreement, Property Manager may retain, supervise and terminate on behalf of the JPA independent contractors to provide for the maintenance, repair and operation of the Property and Improvements. The on-site Building Manager and Engineering staff shall be direct employees of the Property Manager. Any independent contractors employed full-time at the property shall be subject to the approval of the JPA.
- i. Project Insurance. The JPA shall procure and maintain, or cause to be procured and maintained, throughout the term of this agreement, at the JPA's expense, insurance of such kinds and amounts as the JPA shall from time to time be required to carry pursuant to the provisions of the Underlying Documents, Space Leases, Insurance Requirements and Applicable Law, and in addition thereto, such other kinds and amounts of insurance as the JPA shall from time to time desire. All policies of liability insurance shall name Property Manager as an additional insured thereunder.
- j. Management of MTS Subleases. Property Manager shall be responsible for the day to day management of the MTS Subleases (with the exclusion of the San Diego Trolley, Inc. sublease) and tenants on the first floor of the Building. Duties and responsibilities shall include, but are not limited to, responding to tenant questions, collecting rent, renewing leases (with prior approval from MTS), exercising option years (with prior approval of MTS), perform repairs and maintenance as needed, enforcing all provisions of the subleases, and any other duty or task as directed by MTS.
- k. Enforcement of Contracts. Property Manager shall enforce all material provisions of the Service Contracts, unless written approval of the JPA to the contrary is obtained by Property Manager. Property Manager shall not institute any legal actions or proceedings without the prior written consent of the JPA. Any legal counsel to be engaged in connection therewith shall be designated or approved by the JPA. The expense of any such legal action shall be a Reimbursable Expense.
- l. Books, Records and Periodic Reports. Property Manager shall maintain and establish an accrual basis accounting system that duly accounts for all transactions relating to the discharge of its duties under this Agreement. Property Manager shall also provide the JPA, for the preceding accounting month, on or before the twentieth day of the current accounting month, financial and management reports.
- m. Audit and Inspection of Records. At any time upon reasonable notice during normal business hours and as often as the JPA may deem necessary, Property Manager shall make available to the JPA all of Property Manager's data and records with respect to all matters covered by this Agreement and Property Manager will permit the JPA, at the JPA's expense, to audit, examine and make excerpts or transcripts from such data and payrolls, records of personnel and other data relating to all matters covered by this agreement. Property Manager shall maintain such data and records in an accessible location and condition for a period of not less than four years following the period to which such records relate, unless the JPA agrees in writing to an earlier disposition.
- n. Changes. The JPA and Property Manager may from time to time agree to changes in the scope of the services of Property Manager to be performed hereunder. Such changes, including any increase or decrease in the amount of Property Manager's compensation which are mutually agreed upon by and between the JPA and Property Manager, shall be effective when incorporated in written amendments to this Agreement.
- o. Equal Opportunity. Property Manager will not discriminate against any employee, or against any applicant for such employment, tenant, or applicant for tenancy, because of age, race, color, religion, physical handicap, ancestry, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading,

demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and tenancy.

- p. Parking Structure. Subject to paragraph "F", Property Manager shall maintain and operate the parking structure and facilities ("The Auto Park"). including but not limited to parking vendor contracting and management including revenue collecting and auditing, structural maintenance and improvements, marketing available parking as directed by the JPA, and managing physical and contracted security for the structure.
- q. Bank Account. Property Manager will maintain a trust account into which the JPA will deposit on a monthly basis funds sufficient to pay all expenses shown in the Budget which are to be paid directly by Property Manager hereunder, including the management fee specified in paragraph 4.1. In addition, Property Manager shall deposit into such trust account all sums received by Property Manager for the JPA's account, to be held in trust for the payment of budgeted expenses and other expenses which Property Manager is permitted to pay hereunder. Property Manager shall be an authorized signatory on such account, provided that any check over \$5,000.00 shall require prior budgetary approval or co-signature by the JPA. Property Manager will reconcile the bank account on a monthly basis and forward such reconciliations and all supporting documentation to the JPA. Monies held by Property Manager for the JPA's account shall in no event be commingled with Property Manager's own funds or with funds held by Property Manager for the account of other persons.
- r. Collection of Rents. Property Manager will not be responsible for the routine collection of rents from the County or MTS. However, it shall be Property Manager's duty to collect all rents due MTS under its subleases (other than its sublease with San Diego Trolley, Inc.) and to confirm the receipt of rents by inquiry to the MTS's designated representative on or before the 10th day of each month. Property Manager shall assert a diligent effort to collect unpaid rents and shall supervise all collection efforts as to rents which are not paid on a timely basis.
- s. Collection of Parking Revenues. All parking revenues shall be deposited daily into the trust account maintained by the Property Manager and accounted for in the monthly Budget reports.
- t. Compliance with Law. Property Manager shall not do anything to the Property and Improvements which will in any way conflict with any law, ordinance, rule or regulation which now exists or may hereafter be enacted by any public authority.
- u. Possessory Taxes. It is not anticipated that the rights of Property Manager under this Agreement will create a possessory interest subject to property taxation. However, in the event it is finally determined that possessory interest tax is due, by virtue of Property Manager's rights under this Agreement, Property Manager shall be responsible for its full payment, subject to reimbursement by the JPA as a Reimbursable Expense. In this connection, the parties understand and agree that Property Manager shall not have any possession of or claim to or right to the possession of the Property and Improvements, and that Property Manager's rights are not independent or exclusive of the rights of the JPA; that Property Manager's rights are contractual only and no property rights are conferred hereby; and that Property Manager's interest is to operate the Property and Improvements for a monetary consideration for the benefit of the JPA and for the general public at large.
- v. Obstructions. Property Manager shall not obstruct the sidewalk in front of, within, or

adjacent to the Property and Improvements, except as necessary in the performance of its duties under this contract. Property Manager may only store property and supplies in the facilities that are necessary for its operation.

- w. Inspections. Property Manager will permit the JPA, its authorized agents or employees, to enter into and upon the Property and Improvements at all reasonable times for the purpose of inspecting the same.
- 3.2 Authority Withheld. The JPA expressly withholds from Property Manager any power or authority to make any structural changes in the Property and Improvements or to make any other major alterations or additions in or to the Property or Improvements, or to incur any expense chargeable to the JPA other than expenses related to exercising the powers vested in Property Manager pursuant to this Agreement except in the event of an Emergency and then only in accordance with the procedures hereinabove specified. Any authority or power not heretofore expressly granted to Property Manager is reserved by the JPA.
- 3.3 No Other Duties. Property Manager shall have no duties other than those expressly set forth above. Notwithstanding the foregoing, Property Manager shall have the duty to lease the retail space on the ground floor.
- 3.4 Exclusion re: MTS Premises. Notwithstanding any other provision of this Agreement, Property Manager shall have no duty to manage, prepare and administer budgets with respect to, insure or otherwise supervise the operation, maintenance and repair of those portions of the Property and Improvements to be occupied under sublease by MTS for purposes of operating a trolley and bus transfer station and trolley operations, it being the intention of the parties that Property Manager's duties hereunder shall relate only to those portions of the Property and Improvements used for general office and retail purposes, parking, and common plaza areas as shown on Exhibit "B" attached hereto.

## ARTICLE IV

### COMPENSATION OF MANAGER

- 4.1 Compensation. Property Manager shall be entitled to the following:
- a. Reimbursement of all Reimbursable Expenses paid by Property Manager from Property Manager's own funds, payable monthly in arrears on the first day of each month.
  - b. A management fee equal to \$\_\_\_\_\_ per month, payable in advance on the first day of each month.
  - c. The JPA shall cause Property Manager to lease an office at market rent in the Improvements from MTS for Property Manager's use in connection with, the performance of its duties under this Agreement. All rent, additional rent and operating expenses paid under the terms of said lease shall be reimbursable expenses in accordance with paragraph 1.7.
- 4.2 No Other Fees or Compensation. The compensation set forth in Section 4.1 above shall be the only compensation to which Property Manager shall be entitled for the services rendered on behalf of the JPA pursuant to this Agreement, and no other or additional fees, compensation or commissions shall be payable to Property Manager in connection with or on account of such services, unless specifically agreed to in writing by the JPA. Property Manager shall not be

entitled to a commission, fee or other compensation pursuant to this Agreement as a result of any (a) sale, financing, or refinancing of the Property and Improvements (b) ground lease thereof, (c) sale-leaseback thereof, or (d) any other transaction which, although in the form of a lease is essentially a financing or conveyancing transaction, unless specifically agreed to in writing by the JPA.

## ARTICLE V

### TERMINATION

- 5.1 Automatic Termination. Notwithstanding anything contained herein to the contrary, this Agreement shall terminate on the date of any occurrence of any of the following events (except as to rights and obligations which shall have theretofore accrued):
- a. Expiration of the Term in accordance with Section 2.2 hereof;
  - b. The bankruptcy, insolvency, dissolution or liquidation of Property Manager or inability to continue to serve as Property Manager; or
  - c. The failure of Property Manager to maintain its existence.
- 5.2 Termination by the JPA for Default. The JPA shall have the right to terminate this Agreement (except as to rights and obligations which shall have then accrued) at any time without notice upon the default of Property Manager under the terms of this Agreement where such default remains uncured for a period of thirty (30) days.
- 5.3 Termination by the JPA Without Default. The JPA shall have the right to terminate this Agreement for any reason upon one hundred eighty (180) days advance written notice to the Property Manager.
- 5.4 5.5 Termination Upon Destruction or Condemnation. This Agreement shall terminate upon the date of any substantial damage or destruction of the Property or Improvements which, in the JPA's reasonable opinion, materially affects the operation of the Property or Improvements. This Agreement shall terminate upon the date of any conveyance to or taking by any authorized entity under the threat by eminent domain of the Property and Improvements or any substantial portion thereof which, in the JPA's reasonable opinion, materially affects the operation of the Property or Improvements. Upon termination in accordance with this section, neither party shall have any further obligation or liability to the other party except for Property Manager's obligations under Section 5.5 hereof, the JPA's obligations under Section 5.6 and except as is stated in Section 3.1.e.
- 5.6 Property Manager's Duties Upon Termination. At the expiration or earlier termination of this Agreement, Property Manager shall deliver to the JPA or to any Person designated by the JPA:
- a. Cash in the amount equal to all amounts then due the JPA hereunder, including any security deposits of Space Lessees in the Property, to the extent such moneys are held by Property Manager.
  - b. All architectural, mechanical and electrical plans and specifications regarding the Improvements to the extent held in the possession of Property Manager as well as all sets of keys and all books and records in the possession of Property Manager pertaining to the Property and Improvements;

- c. All licenses and permits issued by the appropriate governmental authorities and utilities relative to the Property if held by Property Manager; and
- d. Any other documents, agreements, materials, or reports related to the operation and management of the Property and Improvements.

5.7 The JPA's Duties Upon Termination. At the expiration or earlier termination of this Agreement, the JPA shall deliver to Property Manager or to any person designated by Property Manager cash in the amount equal to all amounts then due to Property Manager hereunder.

## ARTICLE VI

### ASSIGNMENT

- 6.1 Assignment by Property Manager. Property Manager shall not assign this Agreement or any of Property Manager's rights hereunder, nor shall this Agreement or any of Property Manager's rights or obligations hereunder be transferable on Property Manager's part, by operation of law or otherwise, without the JPA's prior written consent.
- 6.2 Assignment by the JPA. Subject to the terms and conditions of the Underlying Documents, 'the JPA may sell or transfer its interest in the Property and Improvements and in connection therewith, may assign its rights and obligations under this Agreement to such purchaser or transferee, and shall be released from any liability or responsibility under this Agreement from and after the date of such assignment. In addition, the JPA has collaterally assigned its interest in this Agreement to State Street Bank and Trust Company of California, N.A. and Swiss Bank Corporation pursuant to a Trust Indenture dates as of November 1, 1987 as security for the issuance of bonds by the JPA, the proceeds of which were used to finance the construction of the Improvements.

## ARTICLE VII

### NO INTEREST IN REAL PROPERTY; NO PARTNERSHIP PROPERTY OF OWNER

- 7.1 Not Real Property. This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature or kind against the Property and Improvements or the JPA's interest therein. The rights of Property Manager created hereby shall at all times be subject and subordinate to the Underlying Documents and any and all deeds to secure debt, deeds of trust, mortgages and the like, now or hereafter encumbering all or any portion of the Property and Improvements, and to all extensions thereof. This clause shall be self-operative, and no further instrument of subordination shall be required from Property Manager. If requested by any mortgagee or by the JPA, Property Manager shall execute promptly any document that the JPA, or any mortgagee, may request to effect such subordination.
- 7.2 No Partnership. Property Manager's relationship to the JPA is strictly and solely that of any independent contractor for the JPA. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture between the JPA and Property Manager or between the JPA and any other Person and nothing contained herein shall be deemed or construed to obligate the JPA for or on account of any debts or obligations of Property Manager other than debts or obligations incurred by Property Manager for the benefit of the JPA in accordance with the provisions of this Agreement. Except for personal property owned by Property Manager and located in Property Manager's office in the Improvements, all property located, at or upon the Property and Improvements, whether real, personal or mixed, including all leases, contracts and funds, is, shall be and will remain the property of the JPA. The JPA shall at all times have the right to enter upon the Property and Improvements to inspect same.



Upon any termination of this Agreement, Property Manager shall promptly deliver to the JPA possession of the Property and Improvements, together with all books, records, funds, accounts and other property of the JPA in Property Manager's possession as a result of this Agreement.

## ARTICLE VIII

### MISCELLANEOUS

- 8.1 Notices. All notices, demands, consents, reports or other communications given or required under this Agreement shall be in writing, shall be given to the JPA or Property Manager at the address first set forth above or at such other address as such parties may hereafter specify in writing. Such notice or other communication shall be delivered by messenger or mailed by United States registered or certified mail, return receipt requested, postage prepaid, deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the United States Postal Service. If hand-delivered, notice shall be effective on delivery; if mailed, notice shall be deemed to have been received by the addressee on the third day after the date of such mailing.
- 8.2 No Waiver. No failure by the JPA to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy in the event of a breach hereunder, and no acceptance of any funds from Property Manager during the continuance of any breach, shall constitute a waiver of any such breach or of any such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Property Manager, nor any breach thereof, shall be waived, altered or modified except by a written instrument executed by the JPA. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach thereof.
- 8.3 Partial Invalidity. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.4 Entire Agreement. This Agreement contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to the subject matter of this Agreement.
- 8.5 References in this Agreement. Numbered or lettered articles, sections and paragraphs herein contained refer to articles, sections and paragraphs of this Agreement unless otherwise expressly stated. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of this Agreement.
- 8.6 Counterparts. This Agreement may be executed in a number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same Agreement.
- 8.7 Amendments. This Agreement may not be amended, altered or modified except by a written instrument signed by Property Manager and the JPA.
- 8.8 Applicable Law. This Agreement shall be interpreted, construed under, and governed by the laws of the State of California.
- 8.9 Successors and Assigns. Subject to the limitations concerning assignment in Article VI herein, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, legal representatives and successors and assigns.

8.10 Time of the Essence. Time is of the essence of this Agreement.

8.11 Dispute Resolution. JPA and the Property Manager agree that every effort shall be made to resolve any dispute arising under this agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Property Manager or JPA. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Property Manager suffer any injury or damage to person or property because of any alleged act or omission of JPA, or if any of Property Manager's employees, agents, or others for whose acts the Property Manager is legally liable suffers any injury or damages to person or property because of any alleged act or omission of JPA, a written claim for damages shall be filed with the JPA Office of General Counsel (Office of San Diego County Counsel) in accordance with the provisions of California Government Code section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by JPA or Property Manager shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under except as may be specifically agreed to in writing.

IN WITNESS WHEREOF, the JPA and Property Manager have executed this Agreement as of the date first above written.

SAN DIEGO REGIONAL BUILDING AUTHORITY, a joint exercise of power agency

By: \_\_\_\_\_  
April F. Heinze, P.E.  
Executive Officer, SDRBA  
And Director of General Services,  
For the County of San Diego,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Paul Jablonski  
Chief Executive Officer, MTS  
For the Metropolitan Transit System

PROPERTY MANAGER:

By: \_\_\_\_\_  
President

Approved as to form:

By: \_\_\_\_\_  
County Counsel

By: \_\_\_\_\_  
Metropolitan Transit System  
Office of General Counsel